IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10494 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FUMTIBEN NARSINGH WD/O NARSINGH CHHEDA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10494 of 2000

MR JOY MATHEW for Petitioner No. 1

MR ANANT S DAVE for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

The petitioner Fumtiben, widow of Narsingh Chheda has filed this petition and prayed that the respondents be directed to sanction and release the family pension to her with immediate effect.

2. Narsingh Chheda was serving in Indian Army. He retired from service way back on 14.5.1967. According to the petitioner, after giving customary divorce to his first wife Baviben, he married her. Out of their wedlock, she delivered six children, 3 daughters and 3 sons, (1) Nareshbhai, (2) Bhikhabhai and (3) Shankerbhai. Narsingh was getting pension till his life time. On 15.2.1995, he made an application dated 15.2.1995 (Annexure A) to the Accounts Officer - respondent no.2 for endorsement of family pension entitlement in the Pension payment Order of living Armed Forces Pensioners wherein he has named 4 persons as nominees, (1) Fumtiben Narsingh (wife), (2) Nareshbhai (son), (3) Bhikhabhai (son) and (4) Shankerbhai (son). However, there was a query from the office of the respondent no.1 raised by letter dated 22.3.1995 (Annexure B) as there was some confusion because of the name of the wife, as in the service record of deceased Narsingh, name of Baviben was mentioned as the first wife whereas in the application form, name of Fumtiben was mentioned. Unfortunately, the petitioner being widow of Narsingh was not in a position to produce further correspondence entered into between Narsingh, deceased husband and the respondent no.2. Thereafter, on 5.6.1999, her husband expired. Therefore, she made a representation in August, 1999 (Annexure I) to grant her family pension. The said application remained undecided so far. Therefore, this petition.

3. Learned Additional Standing Counsel Shri Dave for the respondent submitted that there was no proof of divorce given by deceased Narsingh to his first wife who stated to have remarried Baviben after divorce. He further submitted that there is no proof regarding marriage of Narsingh with present petitioner Fumtiben. Therefore, she cannot be granted family pension because the legal representatives of deceased Baviben might have claimed family pension on death of Baviben who expired on 19.7.1998. Ultimately, he submitted that the Authority be directed to decide the application for family pension in accordance with law.

4. Considering the peculiar facts and circumstances of the case, we are of the considered opinion that the respondent Authority be directed to decide the

application at Annexure I for family pension of the petitioner at the earliest. Accordingly, we direct the Authority to decide the application for family pension of the petitioner as early as possible and not later than 30.9.2003. While deciding the application, the Authority may keep in mind that if there is no claim made by any other person, then on the basis of the earlier application at Annexure A submitted by the deceased husband of the petitioner, the petitioner be granted family pension because it is difficult to believe that she was not the lawfully married wife of deceased Narsingh. The present petitioner is coming from a tribal area and belonging to Scheduled Tribe and therefore, it may be that they may not have such marriage certificate etc. The documents which have been sought to be relied on in support of the case of the petitioner that she was lawfully married wife should also be taken into consideration by the Authority while deciding the application for family pension. It is hoped and trust that the Authority shall consider the application of the petitioner for family pension sympathetically by taking pragmatic approach in the matter and it shall see to it that in future poor persons should not be put into further harassment and proper justice is done at its own level.

5. With these observations and directions, this petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

(B.J.Shethna, J)

(Akshay H Mehta, J)
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